

BRIAN L. JOHNSRUD, State Bar No. 184474
bjohnsrud@curleyhessinger.com
LINDSEY K. SCHROEDER, State Bar No. 245425
lschroeder@curleyhessinger.com
CURLEY, HESSINGER & JOHNSRUD LLP
530 Lytton Avenue, 2nd Floor
Palo Alto, CA 94301
Telephone: 650.617.3270
Facsimile: 650.617.3269

Attorneys for Defendants
U.S. BANK NATIONAL ASSOCIATION and
MICHAEL HART, an individual

FILED
2012 JUL 10 PM 2:05
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER SCHIMMEL,

Plaintiff,

v.

US BANK NATIONAL
ASSOCIATION; MICHAEL HART,
an individual; and DOES 1 through
50, inclusive,

Defendants.

CV12 05922
Case No.

GHK FMOx
NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. §1441(b)

BY FAX

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE THAT Defendants U.S. Bank National
Association ("Defendant U.S. Bank") and Michael Hart ("Defendant Hart"),
(collectively "Defendants"), by and through their attorneys, submit this Notice of
Removal and, pursuant to 28 U.S.C. §1441, remove to this Court the state action
described below:

1. On or about May 16, 2012, Plaintiff Christopher Schimmel
("Plaintiff") filed a Complaint in the Superior Court of the State of California in

1 and for the County of Los Angeles, Case No. BC484496, captioned *Christopher*
 2 *Schimmel v. US Bank National Association; Michael Hart, an individual; and Does*
 3 *1-50, inclusive*. A true and correct copy of the Complaint is attached as Exhibit A.
 4 On June 12, 2012, Plaintiff served the Complaint and Summons on Defendant U.S.
 5 Bank by personal service (proof of service attached as Exhibit B) and Defendant
 6 Hart by substitute service (proof of service attached as Exhibit C).

7 2. On July 9, 2012, Defendants answered Plaintiff's Complaint. A true
 8 and correct copy of Defendants' Answer is attached as Exhibit D. No other
 9 proceedings have been held in this action and the Complaint and Answer constitute
 10 all process, pleadings and orders filed in this case.

11 3. This Notice of Removal is timely filed, pursuant to 28 U.S.C.
 12 §1446(b), in that it is filed within thirty (30) days of service of the Complaint and
 13 Summons. No previous Notice of Removal has been filed or made with this Court
 14 for the relief sought herein.

15 4. Plaintiff, at the time this action was commenced, was and still is a
 16 citizen of the State of California, and a resident of the State of California. *See*
 17 Exhibit A, at ¶ 1.

18 5. At the time the Complaint was filed and presently, Defendant U.S.
 19 Bank is a national banking association. Defendant U.S. Bank's main office, as set
 20 forth in its articles of association, is in Cincinnati, Ohio. Accordingly, Defendant
 21 U.S. Bank was and is a citizen of Ohio, solely, for diversity jurisdiction purposes.
 22 *See* 28 U.S.C. § 1348 ("All national banking associations shall, for purposes of all
 23 other actions by or against them, be deemed citizens of the States in which they are
 24 respectively located."); *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307, 126 S.Ct.
 25 941, 945 (2006) (holding that a national bank, for purposes of 28 U.S.C. § 1348, "is
 26 a citizen of the state in which its main office, as set forth in its articles of
 27 association, is located."). The Doe defendants named in the Complaint have no
 28 effect on this removal. *See Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91

(9th Cir. 1998); 28 U.S.C. § 1441(a) (for removal purposes, the citizenship of defendants sued under fictitious names shall be disregarded).

6. This action is a civil action of which the Court has original jurisdiction pursuant to 28 U.S.C. §1332. This entire action is one that may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. §1441(b), in that it is a civil action between a citizen of the State of California (Plaintiff) and a citizen of Ohio (Defendant U.S. Bank).

7. Plaintiff's tactical attempt to destroy diversity jurisdiction through the fraudulent joinder of individual Defendant Hart should be disregarded. "If the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state, the joinder of the resident defendant is fraudulent." *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). Such fraudulently joined "sham defendants" are disregarded for purposes of subject matter jurisdiction, and the Court's exercise of diversity jurisdiction is proper. *Id.* Here, Plaintiff fraudulently joined Defendant Hart to his first cause of action for defamation and second cause of action for intentional infliction of emotional distress, the only two claims on which he is named as a defendant.

**PLAINTIFF'S DEFAMATION CLAIM AGAINST DEFENDANT HART
FAILS FOR TWO SEPARATE AND INDEPENDENT REASONS:**

8. First, Plaintiff cannot state a claim for defamation because the statement allegedly made by Defendant Hart is protected under the manager's privilege. The manager's privilege "protects a manager's right to manage personnel ... without fear of independent liability, absent concrete and specific allegations that such actions were *entirely* for the benefit of the individual." *Kacludis v. GTE Sprint Communications Corp.*, 806 F. Supp. 866, 872 (N.D. Cal. 1992) (emphasis in original). The manager's privilege applies where the manager's acts were motivated, even in part, by a good faith intent to benefit the company's

1 interest. *See Los Angeles Airways, Inc. v. Davis*, 687 F.2d 321, 328 (9th Cir.1982)
 2 (attorney for corporation found not liable for tortious interference with contract
 3 where his advice was intended at least in part to benefit the corporation); *McCabe*,
 4 811 F.2d at 1339 (corporate managers not liable for wrongful discharge because the
 5 complaint did not allege that they acted on their own initiative, but that their
 6 decisions were ratified by the corporation). A communication by a manager about
 7 an employee's qualifications is "paradigmatic of the sort of activities protected by
 8 the manager's privilege." *Kacludis*, 806 F. Supp. at 872. Here, Plaintiff's
 9 defamation claim relies solely on the alleged statement by Defendant Hart – in
 10 connection with a work meeting – that Plaintiff "was fired" from his former
 11 employment. Exhibit A, ¶ 10. Plaintiff alleges that, in making this alleged
 12 statement, Defendant Hart was acting within the course and scope of his
 13 employment with Defendant U.S. Bank (Exhibit A, ¶ 5) and that high level
 14 management employees of Defendant U.S. Bank "approved and ratified" the
 15 statement. Exhibit A, ¶ 16. Accordingly, based on Plaintiff's own allegations, the
 16 manager's privilege protects Defendant Hart from being named a defendant on
 17 Plaintiff's defamation claim. *Kacludis*, 806 F. Supp. at 872; *McCabe*, 811 F.2d at
 18 1339.

19 9. Second, in addition to the manager's privilege, the alleged statement
 20 by Defendant Hart cannot support a defamation claim as a matter of law. Plaintiff
 21 alleges that the statement is "slanderous per se" as it accuses Plaintiff of
 22 "malfeasance in the performance of his job duties." Exhibit A, ¶16. This, however,
 23 is exactly the type of statement held not to be defamatory as a matter of law. *Moyer*
 24 *v. Amador Valley J. Union High School Dist.*, 225 Cal. App. 3d 720, 725, 275 Cal.
 25 Rptr. 494, 497 (1990) (statements that employee was a "babbler" and the "worst
 26 teacher" at a particular school were not defamatory); *Jensen v. Hewlett-Packard*
 27 *Co.*, 14 Cal. App. 4th 958, 970-71, 18 Cal. Rptr. 2d 83, 89-90 (1993) (holding that
 28 statements made by a manager about the employee's quality of work were not

defamatory); *Gould v. Maryland Sound Indus., Inc.*, 31 Cal. App. 4th 1137, 1154, 37 Cal. Rptr. 2d 718, 728 (1995) (finding a statement accusing Plaintiff of “poor performance” “is clearly a statement of opinion” and not defamatory). Other courts have followed this same rule. *See, e.g., Fairbanks Publishing Co. v. Pitka*, 445 P.2d 685, 689 (Alaska 1968) (publication that an employee was fired, even though he/she had actually resigned, cannot support a claim of defamation); *Jones v. Keith*, 2002 WL 273141 (D. Minn. Feb. 25, 2002) (“Stating that a person has been fired does not constitute defamation per se because the fact does not necessarily injure or discredit the discharged employee.”). In sum, for two separate and independent reasons, Defendant Hart has been fraudulently joined to Plaintiff’s defamation claim.

**PLAINTIFF’S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
CLAIM AGAINST DEFENDANT HART FAILS FOR TWO SEPARATE
AND INDEPENDENT REASONS:**

10. First, the alleged conduct upon which Plaintiff bases his intentional infliction of emotional distress claim is protected by the manager’s privilege. To support his intentional infliction of emotional distress claim, Plaintiff relies on the same alleged conduct underlying his defamation claim; that is, the alleged statement by Defendant Hart that Plaintiff “was fired” from his prior employment. Accordingly, the manager’s privilege applies for the same reasons set forth above in paragraph 8 and shields Defendant Hart from liability for intentional infliction of emotional distress. *Kachudis*, 806 F. Supp. at 872 (“The manager’s privilege thus protects [the individual defendant] from liability for all causes of action pled herein” where the fifth cause of action was a claim for intentional infliction of emotional distress.).

11. Second, Plaintiff’s claim for intentional infliction of emotional distress fails because the alleged conduct does not, as a matter of law, constitute “extreme and outrageous” conduct. To recover for intentional infliction of emotional

distress, the actions must be shown to be “so extreme and outrageous as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Alcorn v. Anbro Eng., Inc.*, 2 Cal. 3d 493, 499 n. 5, 86 Cal. Rptr. 88, 91 n. 5, 468 P.2d 216, 219 n. 5 (1970). Plaintiff’s intentional infliction claim is based solely on the alleged statements that Plaintiff claims are defamatory, and it is well settled that “[d]efamatory accusations are insufficient to give rise to an action for intentional infliction of emotional distress.” *Walker v. Boeing Corp.*, 218 F. Supp. 2d 1177, 1184 (C.D. Cal. 2002); *see also Agostini v. Strycula*, 231 Cal. App. 2d 804, 806-09, 42 Cal. Rptr. 314, 315-317 (1965) (concluding that factual statements regarding plaintiff’s unsuitability for employment do not meet the requisite “extreme and outrageous” level to support an intentional infliction of emotional distress claim). Therefore, Plaintiff’s claim of intentional infliction of emotional distress against Defendant Hart fails as a matter of law. In sum, because Defendant Hart has been fraudulently joined in this action, he must be disregarded for diversity jurisdiction purposes.

12. It is apparent from the Complaint that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Plaintiff alleges that he has “suffered extreme and continuing humiliation, mental anguish and emotional distress” as well as “loss of earnings, loss of reputation, shame, mortification, [and] hurt feelings.” *See* Exhibit A, ¶¶ 19, 24. In addition to seeking damages for defamation, emotional distress, and economic damages in an amount according to proof at time of trial, Plaintiff seeks to recover punitive damages to punish Defendants and to deter others from engaging in similar conduct. *See* Exhibit A, ¶¶ 19, 24, (Prayer for Relief) 2, 4, 14.

13. Further, we reviewed various employment law jury verdicts in California between 2010 and 2012 involving the types of claims Plaintiff alleges here. Whereas Defendants acknowledge that each case is different, and deny liability and damages in this action, there have been a number of verdicts in excess

1 of \$75,000. In cases involving a defamation claim brought against an employer,
 2 there were jury verdicts in the amounts of \$1,630,334, \$260,000, and \$500,000,
 3 exclusive of interest and costs. Declaration of Lindsey K. Schroeder (attached as
 4 Exhibit E), ¶ 2. In cases involving claims of lost compensation due to false
 5 promises in an alleged agreement, there were jury verdicts in the amounts of
 6 \$226,350, \$1,347,000, and \$9,584,000, exclusive of interest and costs. Exhibit E, ¶
 7 3. While Plaintiff does not specify the amount of damages he seeks, in 2011, he
 8 earned from Defendant U.S. Bank a taxable income of more than three (3) times the
 9 jurisdictional minimum, suggesting he was a relatively significant earner and
 10 therefore will presumably seek damages in excess of \$75,000, exclusive of interest
 11 and costs. Accordingly, while Defendants deny liability and damages, it is evident
 12 that the amount in controversy exceeds the sum or value of \$75,000, exclusive of
 13 interest and costs.

14 14. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a),
 15 because this district embraces the county in which the removed action has been
 16 pending.

17 15. Defendants will promptly serve Plaintiff with this Notice of Removal
 18 and file a copy of this Notice of Removal with the clerk of the state court in which
 19 the action is pending, as required by 28 U.S.C. § 1446(d).

20 16. WHEREFORE, pursuant to these statutes and in accordance with the
 21 procedures set forth in 28 U.S.C. §1446, Defendants pray that the above-captioned
 22 action in the Superior Court of the State of California in and for the County of Los
 23 Angeles be removed therefrom to this Court.

24 Dated: July 10, 2012

CURLEY, HESSINGER & JOHNSRUD LLP

25 By 

26 LINDSEY K. SCHROEDER
 27 Attorneys for Defendants
 28 U.S. BANK NATIONAL ASSOCIATION
 and MICHAEL HART, an individual

EXHIBIT A

91436
A6010

Paul A. Greenberg, State Bar #76604
 Iris Weinmann, State Bar #161101
 S. Adam Spiewak, State Bar #230872
 GREENBERG & WEINMANN
 1101 Montana Avenue, Suite D
 Santa Monica, CA 90403
 Telephone: (310) 319-6188
 Fax: (310) 319-6189
 E-Mail: paul@greenbergglaw.com

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

MAY 13 2012

John A. Clarke, Executive Officer/Clerk
 BY [Signature] Deputy
 Amber La-Fleur-Clayton

Attorneys for Plaintiff CHRISTOPHER SCHIMMEL

057 Ralph Dau

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

CHRISTOPHER SCHIMMEL,

Case No. **BC484496**

Plaintiff,

COMPLAINT FOR:

vs.

1. Defamation;
2. Intentional Infliction of Emotional Distress;
3. Intentional Misrepresentation;
4. Negligent Misrepresentation; and
5. Breach of Oral Contract

US BANK NATIONAL ASSOCIATION;
 MICHAEL HART, an Individual; and DOES 1
 through 50, Inclusive,

Defendants.

[Demand for Jury Trial]

Plaintiff alleges:

PRELIMINARY ALLEGATIONS

1. Plaintiff CHRISTOPHER SCHIMMEL is an individual residing in the Los Angeles, State of California.
2. Plaintiff is informed and believes and thereupon alleges that at all times relevant hereto, Defendant US BANK NATIONAL ASSOCIATION ("US Bank") was and is a bank institution doing business in Los Angeles County, California.

CIT/CASE: BC484496 LEA/DEF#:
 RECEIPT #: CCH03054120
 DATE PAID: 05/18/12 03:00:34 PM
 PAYMENT: \$395.00
 RECEIVED: 0310
 CASH: 395.00
 CHECK: 395.00
 CHANGE:
 CARD:

1 3. Plaintiff is informed and believes and thereupon alleges that Defendant MICHAEL
2 HART is an individual residing in Los Angeles County, California.

3 4. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of the Defendants named herein as Does 1 through 50, inclusive, are unknown to
5 Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff
6 will seek leave to amend this Complaint to insert the true names and capacities of said
7 Defendants when the same become known to Plaintiff. Plaintiff is informed and believes and
8 based thereon alleges that each of the fictitiously named Defendants is responsible for the
9 wrongful acts alleged herein, and is therefore liable to Plaintiff as alleged hereinafter.

10 5. Plaintiff is informed and believes and based thereon alleges that at all times relevant
11 hereto, Defendants, and each of them, were the agents, employees, coconspirators, parent
12 corporation, joint employers, alter ego, and/or joint venturers of the other Defendants, and each
13 of them, and in doing the things alleged herein, were acting at least in part within the course and
14 scope of said agency, employment, conspiracy, joint employer, alter ego status, and/or joint
15 venture and with the permission and consent of each of the other Defendants.

16 6. Whenever and wherever reference is made in this Complaint to any act or failure to
17 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to
18 mean the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

19 7. Plaintiff began his employment with US Bank as a Wealth Management Consultant
20 in November, 2010. Plaintiff joined US Bank after resigning his nearly 20 year employment with
21 Bank of America Merrill Lynch.

22 8. US Bank's management made numerous representations to Plaintiff regarding what
23 the terms and conditions of his employment would be should he choose to join US Bank's
24 employ, and the manner in which leads would be administered. Specifically, Plaintiff was
25 assured that he would get 100% of the leads from all commercial bankers in the Encino office.
26 Based in significant part on these representations, Plaintiff accepted employment with US Bank.

11. This false statement is injurious to Plaintiff's reputation within the small private wealth management industry, as well as generally, and is untrue, as documented in writing.

(For Defamation Against All Defendants)

12. Plaintiff refers to the allegations contained in paragraphs 1 through 11, inclusive, of this Complaint, and by reference thereto incorporates the same herein as though fully set forth.

1 13. Beginning on or about May 19, 2011 and continuing through the present,
2 Defendants, individually and by and through their management level employees, published
3 statements including, but not limited to, that Plaintiff had been fired from his long term position
4 at Bank of America. This, as well as other statements Plaintiff is informed and believes were
5 made by the defendants, impugned Plaintiff's honesty, veracity, allegiance to Defendants' goals
6 and procedures, competence, and ethics.

7 14. The statements are false.

8 15. Defendants published these statements without believing them to be true and
9 without any reasonable basis to believe them to be true and despite his ready access to
10 information clarifying the falsity of the statements.

11 16. The statements are slanderous per se in that they accuse Plaintiff of malfeasance in
12 the performance of his job duties.

13 17. Plaintiff is informed and believes that these statements were made by Michael Hart,
14 and other high level management employees of US Bank. Further, Plaintiff is informed and
15 believes that high level management employees of US Bank approved and ratified the statements,
16 and failed to verify their veracity.

17 18. The statements were heard by persons who reside in and around Los Angeles
18 County, as well as other counties and states, including present and former employees of US
19 Bank.

20 19. As a proximate result of the above-described publications, Plaintiff has suffered
21 loss of earnings, loss of reputation, shame, mortification, hurt feelings, humiliation, emotional
22 distress and stress, all to his general damage in a sum to be proven at time of trial.

23 20. Defendants' publication of false statements regarding Plaintiff was malicious,
24 continually repeated in the face of Plaintiff's protests, motivated by a grudge, and undertaken as
25 part of a pattern of harassment against Plaintiff and an attempt to set him up to fail at US Bank,
26 and was made in conscious disregard of Plaintiff's rights. Plaintiff is therefore entitled to an
27 award of punitive damages.

SECOND CAUSE OF ACTION

(For Intentional Infliction of Emotional Distress Against All Defendants)

21. Plaintiff refers to the allegations contained in paragraphs 1 through 20, inclusive, of this Complaint, and by reference thereto incorporates the same herein as though fully set forth.

22. Defendants' conduct in repeatedly saying, in the face of Plaintiff's protests, in front of Plaintiff and Plaintiff's co-workers that Plaintiff had been fired from Bank of America was extreme and outrageous, and an abuse of Defendants' authority and position.

23. Said conduct by Defendants was knowing, intentional and willful, and done with a reckless disregard of the probability of causing Plaintiff emotional distress.

24. As a proximate result of Defendants' conduct as alleged herein, Plaintiff has suffered and continues to suffer extreme mental anguish and emotional distress in an amount according to proof at time of trial.

25. The above recited actions of Defendants were done with malice, fraud and/or oppression and in reckless disregard of the rights of Plaintiff. Plaintiff is informed and believes and on that basis alleges that the acts taken towards him were carried out in a malicious, oppressive and fraudulent manner in order to harm Plaintiff, or with a willful and conscious disregard of Plaintiff's rights, thereby causing him unjust hardship, humiliation and/or emotional distress. Such conduct was despicable and justifies an award of punitive damages against Defendants in an amount sufficient to deter them from engaging in such conduct again in the future, in an amount according to proof at time of trial.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
.
2
3
4
5
6
7
8

1
2
3
4
5
6
7
8

6
7
8

33. As a further proximate result of Defendants' actions as alleged hereinabove, Plaintiff has been harmed in that he has suffered extreme and continuing humiliation, mental anguish and emotional distress, in an amount according to proof at time of trial.

34. Defendants' conduct in making material misrepresentations to Plaintiff and concealing material facts from him were done with malice, fraud and/or oppression and in reckless disregard of Plaintiff's rights. Plaintiff is informed and believes and on that basis alleges that Defendants' conduct was carried out by managing agents of US Bank, and/or with the ratification and approval of officers and/or managing agents of US Bank in a malicious, oppressive and fraudulent manner in order to harm Plaintiff, or with a willful and conscious disregard of Plaintiff's rights, thereby causing him unjust hardship, humiliation and/or emotional distress. Such conduct was despicable and justifies an award of punitive damages against Defendants in an amount sufficient to deter them from engaging in such conduct again in the future, in an amount according to proof at time of trial.

FOURTH CAUSE OF ACTION

(For Negligent Misrepresentation Against Defendants US BANK and Does 1 through 10)

35. Plaintiff refers to the allegations contained in paragraphs 1 through 34, inclusive, of this Complaint, and by reference thereto incorporates the same herein as though fully set forth.

36. In or about November of 2010, in Los Angeles County, California, Defendants falsely represented to Plaintiff that if he would join US Bank in its private wealth management group, he would be given 100% of leads from all commercial bankers in US Bank's Encino branch.

37. Said representations were false. The true facts, unknown to Plaintiff at the time, were as follows: Defendants did not intend to provide Plaintiff with 100% of leads from all commercial bankers in the Encino office, and would instead divert a large percentage of the leads to wealth managers in US Bank's Santa Barbara office.

1 manager, and US Bank agreed that Plaintiff would be given 100% of leads from all commercial
2 bankers in US Bank's Encino office.

3 46. The contract between the parties was entered into and was to be performed in Los
4 Angeles County, California.

5 47. Plaintiff accepted the terms of the contract through oral agreement and through
6 performance.

7 48. Plaintiff performed all conditions, covenants and promises required of him to be
8 performed in accordance with his contract.

9 49. Defendants breached their contract with Plaintiff by failing to provide him with
10 leads from all commercial bankers in the Encino office, instead diverting nearly half of the leads
11 to wealth managers in the Santa Barbara office.

12 50. As a proximate result of Defendants' breach of their contract with Plaintiff,
13 Plaintiff has suffered damages in an amount according to proof at time of trial.

14
15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff requests the following judgment and relief:

17 FIRST CAUSE OF ACTION:

- 18 1. For damages for defamation in an amount according to proof at time of trial;
19 2. For punitive damages in an amount appropriate to punish Defendants and to deter
20 others from engaging in similar conduct;

21 SECOND CAUSE OF ACTION:

- 22 3. For damages for emotional distress, humiliation and mental anguish in an amount
23 according to proof at time of trial;
24 4. For punitive damages in an amount appropriate to punish Defendants and to deter
25 others from engaging in similar conduct;

26 THIRD CAUSE OF ACTION

- 27 12. For economic damages in an amount according to proof at time of trial;
28

1 13. For damages for emotional distress, humiliation and mental anguish in an amount
2 according to proof at time of trial;

3 14. For punitive damages in an amount appropriate to punish Defendants and to deter
4 others from engaging in similar conduct;

5 FOURTH CAUSE OF ACTION:

6 15. For economic damages in an amount according to proof at time of trial;

7 16. For damages for emotional distress, humiliation and mental anguish in an amount
8 according to proof at time of trial;

9 FIFTH CAUSE OF ACTION:

10 17. For damages for breach of contract in an amount according to proof at time of
11 trial;

12 ALL CAUSES OF ACTION:

13 18. For interest on lost earnings, lost benefits, and emotional distress damages at the
14 prevailing legal rate from the date of breach by Defendants as proved at time of trial;

15 19. For attorney's fees and costs of suit incurred herein; and

16 20. For such other and further relief as the Court may deem just and proper.

17
18 DATED: May 15, 2012

GREENBERG & WEINMANN

19
20 

21 PAUL A. GREENBERG

22 IRIS WEINMANN

23 S. ADAM SPIEWAK

24 Attorneys for Plaintiff CHRISTOPHER SCHIMMEL

25 D:\Schimmel\Complaint.doc

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

DATED: May 15, 2012

GREENBERG & WEINMANN



PAUL A. GREENBERG

IRIS WEINMANN

S. ADAM SPIEWAK

Attorneys for Plaintiff CHRISTOPHER SCHIMMEL

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Paul A. Greenberg (SBN 76604) Iris Weinmann (SBN 161101) S. Adam Spiewak (SBN 230872) GREENBERG & WEINMANN 1101 Montana Avenue, Suite D, Santa Monica, CA 90403 TELEPHONE NO.: (310) 319-6188 FAX NO. (Optional): (310) 319-6189 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF, Christopher Schimmel		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES JUN 20 2012 John A. [Signature] Officer/Clerk BY [Signature] Deputy Eugene Julliano
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District		CASE NUMBER: BC484496
PLAINTIFF/PETITIONER: Christopher Schimmel DEFENDANT/RESPONDENT: US Bank National Association; Michael Hart; et al.		Ref. No. or File No.: 177817
PROOF OF SERVICE OF SUMMONS		

(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
 - ☒ summons
 - ☒ complaint
 - ☒ Alternative Dispute Resolution (ADR) package
 - ☒ Civil Case Cover Sheet (served in complex cases only)
 - ☐ cross-complaint
 - ☒ other (specify documents): NOTICE OF CASE ASSIGNMENT; VOLUNTARY EFFICIENT LITIGATION STIPULATIONS
- Party served (specify name of party as shown on documents served):
US Bank National Association
 - ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Mario Sanchez, Assistant Branch Manager, authorized to accept service of process on behalf of the defendant
- Address where the party was served: 633 W. Fifth Street, 1st Floor, Los Angeles, CA 90071
- I served the party (check proper box)
 - ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 6/12/2012 (2) at (time): 10:00 AM
 - ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Christopher Schimmel	CASE NUMBER: BC484496
DEFENDANT/RESPONDENT: US Bank National Association; Michael Hart; et al.	

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (*specify means of service and authorizing code section*):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (*specify*):
- c. ☐ as occupant.
- d. ☒ On behalf of (*specify*): US Bank National Association
under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input checked="" type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Thanusak Mahattakulrungsi
- b. Address: PO Box 27975, Los Angeles, CA 90027
- c. Telephone number: (213) 202-6030
- d. The fee for service was: \$
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☒ employee ☐ independent contractor.
- (ii) Registration No.: 5620
- (iii) County: LOS ANGELES

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 6/12/2012

Thanusak Mahattakulrungsi

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

EXHIBIT C

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Paul A. Greenberg (SBN 76604) Iris Weinmann (SBN 161101) S. Adam Spiewak (SBN 230872) GREENBERG & WEINMANN 1101 Montana Avenue, Suite D, Santa Monica, CA 90403 TELEPHONE NO.: (310) 319-6188 FAX NO. (Optional): (310) 319-6189 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF, Christopher Schimmel		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES JUN 20 2012 John [Signature] Officer/Clerk BY [Signature] Deputy Mylena Jolano
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District		
PLAINTIFF/PETITIONER: Christopher Schimmel DEFENDANT/RESPONDENT: US Bank National Association; Michael Hart; et al.		CASE NUMBER: BC484496
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.: 177818

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): NOTICE OF CASE ASSIGNMENT; VOLUNTARY EFFICIENT LITIGATION STIPULATIONS
3. a. Party served (specify name of party as shown on documents served):
Michael Hart, an individual
- b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: 633 W. Fifth Street, 1st Floor, Los Angeles, CA 90071
5. I served the party (check proper box)
 - a. ☐ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
 - b. ☒ by substituted service. On (date): 6/12/2012 at (time): 10:00 AM I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
Mario Sanchez, Asst. Branch Manager, authorized to accept service of process on behalf of the defendant
 - (1) ☒ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☒ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): 6/12/2012 from (city): Los Angeles or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Christopher Schimmel	CASE NUMBER: BC484496
DEFENDANT/RESPONDENT: US Bank National Association; Michael Hart; et al.	

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (*specify means of service and authorizing code section*):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☒ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (*specify*):
- c. ☐ as occupant.
- d. ☐ On behalf of (*specify*):
- under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Thanusak Mahattakulrungsi
- b. Address: PO Box 27975, Los Angeles, CA 90027
- c. Telephone number: (213) 202-6030
- d. The fee for service was: \$
- e. I am:
- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☒ employee ☐ independent contractor.
- (ii) Registration No.: 5620
- (iii) County: LOS ANGELES

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 6/12/2012

Thanusak Mahattakulrungsi

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

EXHIBIT D

1 BRIAN L. JOHNSRUD, State Bar No. 184474
2 LINDSEY K. SCHROEDER, State Bar No. 245425
3 CURLEY, HESSINGER & JOHNSRUD LLP
4 530 Lytton Avenue, 2nd Floor
5 Palo Alto, CA 94301
6 Telephone: 650.617.3270
7 Facsimile: 650.617.3269

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 09 2012

8 Attorneys for Defendants
9 U.S. BANK NATIONAL ASSOCIATION and
10 MICHAEL HART, an individual

John A. Clarke, Executive Officer/Clerk
By [Signature], Deputy
KATHLEEN CLATTON

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF LOS ANGELES

13 CHRISTOPHER SCHIMMEL,

Case No. BC484496

14 Plaintiff,

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT

15 v.

D-57

BY FAX

16 US BANK NATIONAL ASSOCIATION;
17 MICHAEL HART, an individual; and
18 DOES 1 through 50, inclusive,

19 Defendants.

20 Defendants U.S. BANK NATIONAL ASSOCIATION ("Defendant U.S. Bank") and
21 MICHAEL HART ("Defendant Hart"), (collectively "Defendants"), by and through their
22 attorneys, hereby answer Plaintiff CHRISTOPHER SCHIMMEL's ("Plaintiff") unverified
23 Complaint as follows:

24 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants generally
25 deny each and every material allegation of Plaintiff's Complaint, and deny further that Plaintiff
26 has been injured in the amount or manner alleged or in any amount or manner.

27 WHEREFORE, Defendants assert the following affirmative defenses and pray for an
28 award and judgment as hereinafter set forth:

///

///

CURLEY, HESSINGER &
JOHNSRUD LLP
COUNSELORS AT LAW
PALO ALTO

CASE NO. BC484496

DEFENDANTS' ANSWER TO COMPLAINT

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

As a separate and affirmative defense, Plaintiff's Complaint, and each cause of action alleged therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Privilege and Justification)

As a separate and affirmative defense, Defendants are informed and believe and on that basis allege that Plaintiff's Complaint, and each cause of action alleged therein, is barred because Defendants' conduct as alleged in the Complaint was legally privileged and/or justified, including but not limited to the privilege set forth in California Civil Code Section 47(c).

THIRD AFFIRMATIVE DEFENSE

(Manager's Privilege)

As a separate and affirmative defense, Defendants are informed and believe and on that basis allege that Plaintiff's Complaint, and each cause of action alleged therein, is barred because Defendants' conduct as alleged in the Complaint was done as a good faith assertion of Defendants' rights and was therefore privileged, including without limitation, the manager's privilege and/or immunity.

FOURTH AFFIRMATIVE DEFENSE

(Workers' Compensation – Exclusive Remedy)

As a separate and affirmative defense to the Complaint and to every cause of action alleged therein, Defendants are informed and believe and on that basis allege that to the extent Plaintiff seeks recovery on account of physical, mental and emotional pain and suffering, Plaintiff's exclusive remedy for such damages is under the California Workers' Compensation Act.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

As a separate and affirmative defense to the Complaint and to every cause of action alleged therein, Defendants are informed and believe and on that basis allege that Plaintiff, by his

1 acts and/or omissions, has waived and/or is estopped, in whole or in part, from asserting any of
2 the claims on which he seeks relief.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 **(Waiver)**

5 As a separate and affirmative defense to the Complaint and to every cause of action
6 alleged therein, Defendants are informed and believe and on that basis allege that Plaintiff's
7 claims, or some of them, are barred in whole or in part because such claims have been waived,
8 discharged and/or abandoned.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(Unclean Hands)**

11 As a separate and affirmative defense, Defendants are informed and believe and on that
12 basis allege that Plaintiff's Complaint, and each cause of action alleged therein, is barred in whole
13 or in part, by Plaintiff's own unclean hands.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(Consent)**

16 As a separate and affirmative defense to the Complaint and each cause of action alleged
17 therein, Defendants are informed and believe and on that basis allege that Plaintiff consented to
18 some or all of the conduct alleged in the Complaint.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Truth)**

21 As a separate and affirmative defense, Defendants are informed and believe and on that
22 basis allege that Plaintiff's defamation claim is barred because one or more of the alleged
23 statements were and are true.

24 **TENTH AFFIRMATIVE DEFENSE**

25 **(First Amendment)**

26 As a separate and affirmative defense to the Complaint and to every cause of action
27 alleged therein, Defendants are informed and believe and on that basis allege that, to the extent
28 any claim for damages is based on speech or content thereof, such claim is barred by the First

1 Amendment to the United States Constitution.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 **(Failure of Consideration)**

4 As a separate and affirmative defense, Defendants are informed and believe and on that
5 basis allege that Plaintiff's breach of oral contract claim is barred as a result of a failure of
6 consideration.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 **(Failure to Satisfy Condition Precedent)**

9 As a separate and affirmative defense, Defendants are informed and believe and on that
10 basis allege that Plaintiff's breach of oral contract claim is barred because Plaintiff failed to perform
11 all material conditions precedent under any contracts with Defendants.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 **(Anticipatory Repudiation)**

14 As a separate and affirmative defense, Defendants are informed and believe and on that
15 basis allege that Plaintiff's breach of oral contract claim is barred because Plaintiff repudiated his
16 obligations under the contracts that form the basis of his Complaint.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 **(Failure to Mitigate)**

19 As a separate and affirmative defense, Defendants are informed and believe and on that
20 basis allege that Plaintiff's Complaint, and each cause of action alleged therein, is barred because
21 Plaintiff failed to mitigate his alleged damages, if any.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Avoidable Consequences)**

24 As a separate and affirmative defense to Plaintiff's Complaint and each cause of action
25 alleged therein, Defendants allege that Plaintiff unreasonably failed to avoid harm, and that a
26 reasonable course of conduct by Plaintiff would have prevented some, if not all, of Plaintiff's
27 alleged damages.

28 ///

SIXTEENTH AFFIRMATIVE DEFENSE**(After-Acquired Evidence)**

As a separate and affirmative defense to Plaintiff's Complaint and each cause of action alleged therein, to the extent during the course of this action Defendants acquire any evidence of wrongdoing by Plaintiff, which wrongdoing would have materially affected the terms and conditions of Plaintiff's employment or would have resulted in Plaintiff being demoted, disciplined, or terminated, such after-acquired evidence shall bar Plaintiff on liability or damages or shall reduce such claims as provided by law.

SEVENTEENTH AFFIRMATIVE DEFENSE**(Constitutional Limit – Punitive Damages)**

As a separate and affirmative defense to the Complaint and to every cause of action alleged therein, Defendants are informed and believe and on that basis allege that Plaintiff's claim for punitive damages is barred by the Due Process Clause (Fifth Amendment, Fourteenth Amendment, Section 1) and the Excessive Fines Clause (Eighth Amendment) of the United States Constitution and the corresponding provisions of the California Constitution.

EIGHTEENTH AFFIRMATIVE DEFENSE**(Right of Arbitration/Lack of Jurisdiction)**

As a separate and affirmative defense to the Complaint and to every cause of action alleged therein, Defendants are informed and believe and on that basis allege that pursuant to one or more arbitration agreements that applied to Plaintiff's employment relationship with Defendant U.S. Bank (and also Defendant Hart as a third-party beneficiary) Plaintiff's claims are subject to mandatory arbitration, and accordingly, this Court lacks jurisdiction over Plaintiff's claims.

WHEREFORE, Defendants pray for an award as follows:

1. That Plaintiff take nothing by the Complaint;
2. That a judgment be entered against Plaintiff and in favor of Defendants on all claims;
3. That Defendants be awarded their attorneys' fees under applicable law;
4. That Defendants be awarded costs of suit herein; and

1 5. For such other and further relief as the Court deems just and proper.
2

3 Dated: July 9, 2012

CURLEY, HESSINGER & JOHNSRUD LLP

4
5 By 

6 BRIAN L. JOHNSRUD
7 Attorneys for U.S. BANK NATIONAL
8 ASSOCIATION and
9 MICHAEL HART, an individual
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 530 Lytton Avenue, 2nd Floor, Palo Alto, California 94301.

On July 9, 2012, I served the within document(s):

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- ☐ by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth below.
- ☐ by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

Paul A. Greenberg, Esq.
Iris Weinmann, Esq.
S. Adam Spiewak, Esq.
GREENBERG & WEINMAN
1101 Montana Avenue, Suite D
Santa Monica, CA 90403

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 9, 2012, at Palo Alto, California.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

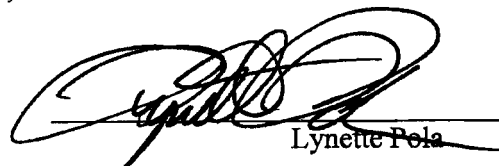

Lynette Pola

EXHIBIT E

BRIAN L. JOHNSRUD, State Bar No. 184474
bjohnsrud@curleyhessinger.com
LINDSEY K. SCHROEDER, State Bar No. 245425
lschroeder@curleyhessinger.com
CURLEY, HESSINGER & JOHNSRUD LLP
530 Lytton Avenue, 2nd Floor
Palo Alto, CA 94301
Telephone: 650.617.3270
Facsimile: 650.617.3269

Attorneys for Defendants
U.S. BANK NATIONAL ASSOCIATION and
MICHAEL HART, an individual

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER SCHIMMEL,
Plaintiff,

v.

US BANK NATIONAL
ASSOCIATION; MICHAEL HART,
an individual; and DOES 1 through
50, inclusive,

Defendants.

Case No.

**DECLARATION OF LINDSEY K.
SCHROEDER IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL OF ACTION**

I, Lindsey K. Schroeder, declare and state as follows:

1. I am an attorney at the law firm of Curley, Hessinger & Johnsrud LLP, attorneys of record for U.S. Bank National Association ("Defendant U.S. Bank") and Michael Hart (collectively "Defendants"). I am licensed to practice law before all of the Courts for the State of California and the Central District of California. I have direct and personal knowledge of the facts set forth in my Declaration and, if called and sworn as a witness, I would competently testify to these facts.

2. I reviewed various employment law jury verdicts in California between 2010 and 2012 involving a defamation claim brought against an employer.

1 Jury verdicts were rendered in the amounts of \$1,630,334, \$260,000, and \$500,000,
2 exclusive of interest and costs. True and correct copies of the Trial Digests
3 corresponding to those jury verdicts are attached, collectively, as Exhibit 1.

4 3. I reviewed various employment law jury verdicts in California
5 between 2010 and 2012 involving a claim of lost compensation due to false
6 promises in an alleged agreement. Jury verdicts were rendered in the amounts of
7 \$226,350, \$1,347,000, and \$9,584,000, exclusive of interest and costs. True and
8 correct copies of the Trial Digests corresponding to those jury verdicts are attached,
9 collectively, as Exhibit 2.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed this 10th day of July 2012, at Palo Alto, California.

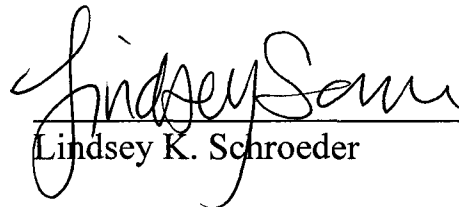
13
14 
15 Lindsey K. Schroeder
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

O'Connor vs. UHS-Corona Inc., 34 Trials Digest 14th 11 (2011)

34 Trials Digest 14th 11, 2011 WL 3606915 (Cal.Superior) (Verdict and Settlement Summary)

Copyright (c) 2012 Thomson Reuters/West
Superior Court, Riverside County, California.

O'Connor vs. UHS-Corona Inc.

TOPIC:

Synopsis: Nurse alleges retaliatory termination in violation of CFRA

Case Type: Labor & Employment; Retaliation; Labor & Employment; Termination/Constructive Discharge; Labor & Employment; Family & Medical Leave; Defamation; Other; Labor & Employment; Violation of Public Policy

DOCKET NUMBER: RIC516507

STATE: California

COUNTY: Riverside

Verdict/Judgment Date: January 20, 2011

JUDGE: Lillian Y. Lim

ATTORNEYS:

Plaintiff: Jeffrey A. Rager, Rager Law Firm, Torrance; Melanie Rasic Savarese, Savarese Law Firm, Sierra Madre.

Defendant: Tracie Childs, Manning & Marder, Kass, Ellrod, Ramirez, San Diego; Al De La Cruz, Manning & Marder, Kass, Ellrod, Ramirez, San Diego.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$1,630,334

Range: \$1,000,000-1,999,999

\$130,334 past economic loss; \$1,000,000 past non-economic loss; \$500,000 future non-economic loss against defendants UHS-Corona Inc. dba Corona Regional Medical Center and UHS of Delaware Inc. During a concurrent bench trial, the court ruled that Universal Health Services Inc. was not a single or joint employer of plaintiff, and judgment was issued in favor of Universal Health Services Inc. as against plaintiff.

Trial Type: Jury

Deliberations: Not reported.

Jury Poll: Not reported.

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to court records: On March 25, 2003, plaintiff Doreen O'Connor began her employment with defendants Corona Regional Medical Center, Universal Health Services Inc. ("UHS"), Brenda Schicker, Ruth Battles, and May Walsh as an RN on the nursery staff from 7:00 a.m. to 7:00 p.m.

On July 9, 2003, plaintiff's Performance Review read, "Doreen meets or exceeds all standards of performance. She is very willing to learn and very pleasant with patients and co-workers. It is a pleasure to have Doreen on staff, she has experienced

O'Connor vs. UHS-Corona Inc., 34 Trials Digest 14th 11 (2011)

some very busy shifts and is doing an excellent job.”

On March 23, 2005, plaintiff was rated overall as “Exceeds Requirements.” The review stated, “Doreen has been very helpful in some of the changes that have taken place in our department. She developed two of the tests that were used for competencies in our mother-baby department. Doreen is a very knowledgeable and skilled nurse here at Corona and we are lucky to have her here as part of our staff.”

In April 2006, plaintiff was promoted to Charge Nurse. In October 2007, defendant Brenda Schicker was hired as Education Manager.

In February and March 2008, plaintiff was on a protected medical leave for diabetes and asthma. Upon return from her medical leave, she was presented with a performance review in May 2008. She received a lower rating and was told not to be “emotional” when presenting concerns to her director. Plaintiff was informed that she was “not giving as much as before because of her medical condition.”

On October 8, 2008, plaintiff was informed she was fired by defendants Schicker, Battles, and Walsh. In the presence of others, plaintiff was accused of “harassing, stocking [sic], and spying, on the nursing staff.” She was accused of “inappropriate behavior and inappropriate language.” She was told that the staff felt “threatened” by her.

Plaintiff filed suit for Retaliation in Violation of the California Family Rights Act, Wrongful Termination in Violation of Public Policy, Retaliatory Termination in Violation of Public Policy, and Defamation Per Se.

CLAIMED INJURIES

According to court records:

Emotional distress; major depressive disorder.

CLAIMED DAMAGES

According to court records:

\$125,723 loss of earnings.

SETTLEMENT DISCUSSIONS

According to court records:

Not reported.

COMMENTS

According to court records:

The complaint was filed on December 30, 2008.

Trials Digest, A Thomson Reuters/West business
Riverside County Superior Court/Central

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

Peggy Jarian, Vosgan Mekhitarian, and Hamayak Jarian v...., 2011 WL 1250149...

2011 WL 1250149 (Cal.Super.)

Copyright (c) 2012 ALM Media Properties, LLC. All Rights Reserved
Superior Court, Los Angeles County, California.

Peggy Jarian, Vosgan Mekhitarian, and Hamayak Jarian v. Mekhitarist Fathers of Vienna dba Mekhitarist
Fathers' Armenian School, Hovannes Khosdeghian, and Rev. Yeghia Vart Kilaghbian

No. BC427095

DATE OF VERDICT/SETTLEMENT: March 15, 2011

TOPIC: EMPLOYMENT - WRONGFUL TERMINATION - INTENTIONAL TORTS - DEFAMATION - EMPLOYMENT
- CALIFORNIA'S FAIR EMPLOYMENT & HOUSING ACT - EMPLOYMENT - RETALIATION - NEGLIGENCE -
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS - INTENTIONAL TORTS - INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS - EMPLOYMENT - SEXUAL HARASSMENT - INTENTIONAL TORTS - SEXUAL
BATTERY

Principal, Secretary Sued Private School for Wrongful Termination

SUMMARY:

RESULT: Verdict-Plaintiff

Award Total: \$260,000

The jury found in favor of both plaintiffs, and awarded \$110,000 to Peggy Jarian and \$150,000 to Mekhitarist. Hamayak Jarian was awarded \$1 for his consortium claim.

The jury found in favor of the defense on Peggy Jarian's sexual harassment, sexual battery and intentional infliction of emotional distress claims, as well as Mekhitarian's retaliation and emotional distress claims.

EXPERT WITNESSES:

Plaintiff: David N. Glaser, M.D.; Psychiatry; Encino, CA

ATTORNEYS:

Plaintiff: Stephen Bernard; Nagelberg & Bernard; Los Angeles, CA (Hamayak Jarian, Peggy Jarian, Vosgan Mekhitarian);
Alena Klimianok; Bernard & Bernard; Los Angeles, CA (Hamayak Jarian, Peggy Jarian, Vosgan Mekhitarian)

Defendant: Maria A. Shakelian; Law Offices of D. Behesnilian; Beverly Hills, CA (Hovannes Khosdeghian); Terenik
Koujakian; Terenik Koujakian, Inc.; Encino, CA (Mekhitarist Fathers of Vienna dba Mekhitarist Fathers' Armenian School,
Rev. Yeghia Vart Kilaghbian)

JUDGE: Michael Charles Solner

RANGE AMOUNT: \$200,000-499,999

STATE: California

COUNTY: Los Angeles

INJURIES: Peggy Jarian sought damages for past and future pain and suffering, lost earnings and future medical expenses. She claimed she sustained severe emotional distress from the damage to her reputation, and was evaluated by a forensic psychiatrist, who diagnosed her with depression. She also claimed that she has not found a new job after being fired.

Facts:

On Nov. 13, 2009, plaintiffs Peggy Jarian, 36, a secretary, and Vosgan Mekhitarian, 64, a principal, were terminated from their respective jobs at Mekhitarist Fathers' Armenian School, a private Catholic school. Jarian had previously filed a complaint for sexual harassment with the school against Hovannes Khosdeghian, a school auditor and administrator.

Peggy Jarian, Vosgan Mekhitarian, and Hamayak Jarian v...., 2011 WL 1250149...

Mekhitarian, who supported Jarian and protested against Khosdeghian's conduct and the school's failure to take remedial measures, was terminated and then replaced by Khosdeghian.

Jarian, Mekhitarian and Jarian's husband, Hamayak Jarian, sued the school, Khosdeghian and Rev. Yeghia Vart Kilaghbian. They brought causes of action for wrongful termination in violation of California's Fair Employment & Housing Act (FEHA), retaliation, defamation, negligent infliction of emotional distress and intentional infliction of emotional distress. Peggy Jarian also brought causes of action for sexual assault and battery, and her husband sued for a loss of consortium.

Peggy Jarian contended that the defendants retaliated against her for filing the sexual harassment claim, stemming from an alleged incident with Khosdeghian three weeks before she was terminated.

Mekhitarian contended that he was fired for defending Peggy Jarian's claims.

Both Peggy Jarian and Mekhitarian contended that the defendants defamed them at several meetings after they were terminated, making false accusations about them stealing from the school while still under its employ.

The defendants denied all of the plaintiffs' accusations. They claimed that Mekhitarian was fired for mismanaging the school, and that Jarian was fired for an incident in which she refused to allow a member of the Board of Directors to enter the school grounds. They claimed that Jarian told him to get the hell out of the school and pretended that she was afraid of him.

The defendants filed cross-complaints against the plaintiffs for conversion and negligence, which, on motions by the plaintiffs, were dismissed by the judge after the defense's case in chief.

Mekhitarian sought damages for past and future lost earnings, as well as pain and suffering.

Hamayak Jarian sought damages for a loss of consortium.

The defendants contended that Peggy Jarian and Mekhitarist were not wrongfully terminated, and owed no damages for lost earnings. They further claimed that their actions did not bring Peggy Jarian any emotional harm, and that she was not owed any damages for her psychiatric treatment.

ALM Properties, Inc.
Superior Court of Los Angeles County, Central

PUBLISHED IN: VerdictSearch California Reporter Vol. 10, Issue 15

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

Betson vs. Rite Aid Corporation, 34 Trials Digest 14th 9 (2011)

34 Trials Digest 14th 9, 2011 WL 3606913 (Cal.Superior) (Verdict and Settlement Summary)

Copyright (c) 2012 Thomson Reuters/West
Superior Court, Los Angeles County, California.

Betson vs. Rite Aid Corporation

TOPIC:

Synopsis: Employee alleges retaliatory discrimination

Case Type: Labor & Employment; Discrimination; Labor & Employment; Family & Medical Leave; Labor & Employment;
Harassment-General; Labor & Employment; Disability/Medical Condition; Labor & Employment; Age; Defamation; Other

DOCKET NUMBER: BC427992

STATE: California

COUNTY: Los Angeles

Verdict/Judgment Date: May 27, 2011

JUDGE: Gregory W. Alarcon

ATTORNEYS:

Plaintiff: Donald Conway, Shegerian & Associates, Santa Monica; Carney R. Shegerian, Shegerian & Associates, Santa Monica.

Defendant: Glenn L. Briggs, Hodel Briggs Winter, Irvine; Theresa A. Kading, Hodel Briggs Winter, Irvine.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$500,000

Range: \$500,000-999,999

\$250,000 past non-economic loss; \$250,000 future non-economic loss.

Trial Type: Jury

Deliberations: Not reported.

Jury Poll: Not reported.

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to court records: Plaintiff Doreen Betson, age 46, was employed by defendant Rite Aid Corporation for 21.5 years in defendant's Beverly Hills store. On February 11, 2008, plaintiff injured her knee at work when she slipped and fell. She was on medical leave until December 16, 2008. At one point after she returned to work, she was told that she could not come to work with a "bad look" on her face, i.e., looking as if she were in pain. On other occasions, she was called "stupid," was told that "her bones were too old," "maybe it's time to retire," "you need to retire," "you are too old to work retail," "perhaps you need a cane at your age," "these disability claims cost me money," "nobody missed you while you were on disability leave," and similar other comments.

On January 6, 2009, security representative Jeffrey Storm terminated plaintiff's employment, allegedly because she issued a

Betson vs. Rite Aid Corporation, 34 Trials Digest 14th 9 (2011)

customer refund when the customer was not present and without a receipt. Plaintiff alleged that everyone knew such refunds were allowed and that more than once she had been asked by defendant to issue such refunds.

Plaintiff met with defendant's human resources manager and her union representative, but received no help. Defendant did not issue plaintiff's final paycheck until two weeks after her employment was terminated, and the check did not include all of her accrued vacation time.

CLAIMED INJURIES

According to court records:
Emotional distress.

CLAIMED DAMAGES

According to court records:
Not reported.

SETTLEMENT DISCUSSIONS

According to court records:
Not reported.

COMMENTS

According to court records:
The complaint was filed on December 14, 2009.

Trials Digest, A Thomson Reuters/West business
Los Angeles County Superior Court/Downtown

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 2

Sandvik vs. Bozung, 45 Trials Digest 14th 9 (2011)

45 Trials Digest 14th 9, 2011 WL 5148016 (Cal.Superior) (Verdict and Settlement Summary)

Copyright (c) 2012 Thomson Reuters/West
Superior Court, San Francisco County, California.

Sandvik vs. Bozung

TOPIC:

Synopsis: Contractor sues for breach of employment contract

Case Type: Contracts; Breach; Labor & Employment; Breach of Contract; Contracts; Quantum Meruit; Personal Property; Conversion

DOCKET NUMBER: CGC09490001

STATE: California

COUNTY: San Francisco

Verdict/Judgment Date: January 4, 2011

JUDGE: A. James Robertson II

ATTORNEYS:

Plaintiff: Ann M. Finneran, Chan, Doi & Leal, San Francisco; George C. Leal, Chan, Doi & Leal, San Francisco; Michael Spalding, Hedani, Choy, Spalding & Salvagione, San Francisco.

Defendant: Scott Handelman, Law Offices of Scott Handelman, Walnut Creek.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$226,350

Range: \$200,000-499,999

Trial Type: Jury

Deliberations: Not reported.

Jury Poll: Not reported.

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to court records: In April 2007, defendant Loretta Bozung purchased a residential property located at 1335 Jackson Street, San Francisco, California for \$918,000. In the hope of securing plaintiff Stein Ove Sandvik's professional services as a licensed contractor, defendant approached plaintiff to discuss plaintiff's potential interest in working full-time for defendant as her on-site construction consultant on the remodeling of the Jackson Street property. Based upon defendant's offer of an hourly wage and a written employment contract, plaintiff confirmed with defendant that he was interested in the job.

On June 4, 2007, plaintiff and defendant signed a written Employment Contract ("Agreement"). The agreed-upon wage was \$75 per hour, payable every two weeks. The Agreement further provided that the employer would reimburse the employee

Sandvik vs. Bozung, 45 Trials Digest 14th 9 (2011)

for all necessary expenses incurred.

Defendant obtained an owner-builder permit and, beginning on June 6, 2007, plaintiff went to work full-time for defendant at her Jackson Street property.

After plaintiff entered into the Agreement and commenced work for defendant, defendant told him she did not want to pay him for more than 40 hours of work during any given week, did not want to pay him every two weeks, wanted him to be responsible for securing and advancing the funds necessary to pay for the labor and material needed, and indicated that she would write him a lump sum check at the end of each month. Plaintiff, having left his former employment, and being unaware of the protections provided to him by the California Labor Code, agreed to continue working for defendant on the modified compensation terms.

Over time, defendant fell behind in her obligation to pay plaintiff his wages and to reimburse him for his necessary expenses. As a result of defendant's promise to bring her obligations to him current once she refinanced the property, plaintiff continued to work for her. Defendant did not, upon receipt of the refinancing proceeds, bring her obligation to plaintiff current. She instead told him she intended to cease work on the Jackson Street property, use the available funds to purchase, remodel, and flip a home on Upper Terrace in San Francisco, told him she intended for him to work on the remodeling project as her employee, and, to induce him to continue in her service, paid him an \$8,000 portion of what he was owed and promised him a 40 percent share in the anticipated profits from the sale of the property after it was remodeled.

On July 17, 2008, defendant entered into a contract to purchase the Upper Terrace property for \$1.1 million. Plaintiff alleged that when defendant entered into the contract, she did not have sufficient cash resources to purchase the property without the assistance of financing from various private third parties. Defendant needed \$60,000 to close escrow, and plaintiff lent defendant the necessary funds based on her promise that those funds would also be repaid to him after the Upper Terrace property was remodeled and sold.

While the Upper Terrace property was being remodeled, the market crashed, and defendant abandoned her plan to do a full renovation in favor of a less extensive and less expensive remodel. Defendant placed the property on the market for \$1,495,000. She received an offer for \$1,445,000. Defendant elected not to accept the offer and that opportunity to realize a profit on the venture was lost.

Three months later, defendant accepted an offer for \$1,250,000. After close of escrow, \$272,184 in net proceeds was paid out to defendant. Plaintiff made a demand upon defendant for payment in full of all of her outstanding obligations to him, including the \$78,639 he believed he was owed for his unpaid labor and the expenses he incurred in connection with the Jackson Street property, the \$60,000 he lent her for the acquisition of the Upper Terrace property, the \$95,457 he believed he was owed for his unpaid labor and the expenses he incurred in connection with the Upper Terrace project, and the \$6,578 he paid on her behalf towards her secured obligation in favor of Robert Wagner, who provided a \$770,000 loan to defendant for purchase of the Upper Terrace property.

Defendant refused to make any such payments.

Plaintiff filed suit for Breach of Written Employment Contract, Breach of Oral Contract, Quantum Meruit, Unjust Enrichment, Conversion, Unlawful Failure to Pay Required Overtime, Failure to Furnish Wage Statements, Waiting Time Penalties, and Unlawful Failure to Indemnify Plaintiff for Necessary Business Expenses.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to court records:

First Cause of Action: \$221,346; Second Cause of Action: \$66,578; Third Cause of Action: \$221,346; Fourth Cause of Action: \$287,924; Fifth Cause of Action: \$66,578; Sixth Cause of Action: \$47,250; Eighth Cause of Action: \$18,000; Ninth Cause of Action: \$107,505.

SETTLEMENT DISCUSSIONS

According to court records:

Not reported.

Trials Digest, A Thomson Reuters/West business
San Francisco County Superior Court

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

Sandvik vs. Bozung, 45 Trials Digest 14th 9 (2011)

Alan Faigin v. Fremont Reorganizing Corporation, 2010 WL 2404232 (2010)

2010 WL 2404232 (Cal.Superior) (Verdict and Settlement Summary)

Copyright (c) 2012 ALM Media Properties, LLC. All Rights Reserved
Superior Court, Los Angeles County, California.

Alan Faigin v. Fremont Reorganizing Corporation

No. BC405550

DATE OF VERDICT/SETTLEMENT: February 16, 2010

TOPIC: EMPLOYMENT - WRONGFUL TERMINATION - CONTRACTS - ORAL AGREEMENT - BANKRUPTCY -
REORGANIZATION - CONTRACTS - BREACH OF CONTRACT
Co.'s General Counsel Said He Couldn't Be Fired Without Cause

SUMMARY:

RESULT: Verdict-Plaintiff

Award Total: \$1,347,000

The jury found for Faigin and awarded him \$1,347,000 in damages.

EXPERT WITNESSES:

ATTORNEYS:

Plaintiff: Daniel Hoffer; Kellman Hoffer LLP; Manhattan Beach, CA (Alan Faigin); Barry D. Kellman; Kellman Hoffer LLP;
Manhattan Beach, CA (Alan Faigin); Celeste M. Brecht; Kellman Hoffer LLP; Manhattan Beach, CA (Alan Faigin)

Defendant: Linda Van Winkle Deacon; Bate, Peterson, Deacon, Zinn & Young; Los Angeles, CA (Fremont Reorganizing
Corporation); David H. Bate; Bate, Peterson, Deacon, Zinn & Young LLP; Los Angeles, CA (Fremont Reorganizing
Corporation)

JUDGE: Robert H. O'Brien

RANGE AMOUNT: \$1,000,000-1,999,999

STATE: California

COUNTY: Los Angeles

INJURIES: Faigin sought economic damages for three years of lost earnings worth \$1,347,000 in regard to the alleged breach of contract.

Facts:

In 2007, plaintiff Alan Faigin had been general counsel to Fremont Reorganizing Corp., formerly known as Fremont Investment & Loan, a subsidiary of Fremont General Corp., for 17 years. That year, the bank was issued a cease-and-desist order from the Federal Deposit Insurance Corporation (FDIC), and Faigin claimed that he was appointed interim president to bring the bank in compliance with the order.

In December, he was terminated and replaced by new management.

In 2008, the bank surrendered its charter and Fremont General filed for bankruptcy.

Faigin sued Fremont Reorganizing, alleging that the defendant breached its implied contract not to terminate him, unless there was cause.

Faigin claimed that he had an implied-in-fact contract with the bank in which he could not be fired without cause. He asserted that he was replaced by a new general counsel. Faigin alleged that the defendant broke an oral promise by terminating his 17

Alan Faigin v. Fremont Reorganizing Corporation, 2010 WL 2404232 (2010)

years of service to the company without cause.

The defendant contended that Faigin did not have an implied-in-fact contract.

The court excluded reference to the parent company, Fremont General, which filed for bankruptcy.

ALM Properties, Inc.

Superior Court of Los Angeles County, Central

PUBLISHED IN: VerdictSearch California Reporter Vol. 9, Issue 24

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

Horner vs. Carrier Corporation, 47 Trials Digest 14th 9 (2011)

47 Trials Digest 14th 9, 2011 WL 5561165 (Cal.Superior) (Verdict and Settlement Summary)

Copyright (c) 2012 Thomson Reuters/West
Superior Court, San Diego County, California.

Horner vs. Carrier Corporation

TOPIC:

Synopsis: Laid-off employee sues for breach of contract and fraud

Case Type: Fraud & Misrepresentation; Fraud; Labor & Employment; Breach of Contract

DOCKET NUMBER: 200900103747

STATE: California

COUNTY: San Diego

Verdict/Judgment Date: June 29, 2011

JUDGE: Luis R. Vargas

ATTORNEYS:

Plaintiff: Chip Edleson, Edleson & Rezzo, San Diego; Joann F. Rezzo, Edelson & Rezzo, San Diego; Kenneth J. Rose, Rose Group, San Diego.

Defendant: John R. Giovannone, Seyfarth Shaw, Los Angeles; G. Daniel Newland, Seyfarth Shaw, San Francisco; Laura Shelby, Seyfarth Shaw, Los Angeles.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$9,584,000

Range: \$5,000,000-999,999,999

\$1,384,000 compensatory damages; \$200,000 non-economic damages; \$19,051 costs; \$16,667 statutory penalty; \$202,741 pre-judgment interest; \$8,000,000 punitive damages, reduced by trial court to \$785,000.

Trial Type: Jury

Trial Length: 8 days.

Deliberations: 1 day.

Jury Poll: Mixed poll.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: Plaintiff Timothy Horner, a territory manager/salesperson, accepted employment with defendant Carrier Corporation based on defendant's written and verbal representation that his employment and offered minimum compensation of \$200,000 per year were guaranteed for five years.

After working for defendant for 13 months, plaintiff was laid off and not paid any more of the guaranteed compensation. Plaintiff sued for breach of contract, breach of the implied covenant of good faith, fraudulent concealment, fraudulent inducement, negligent misrepresentation, and statutory penalties under the California Labor Code.

Defendant contended that it employed plaintiff on an at-will basis and the only guarantee it made was that he would be paid minimum compensation of \$200,000 per year for his first five years of employment, but only for as long as defendant chose to employ him.

Horner vs. Carrier Corporation, 47 Trials Digest 14th 9 (2011)

CLAIMED INJURIES

According to Plaintiff: Emotional distress.

CLAIMED DAMAGES

According to Plaintiff: Lost past and future compensation; damages for emotional distress; punitive damages; Labor Code penalties; interest; attorney fees; and costs.

SETTLEMENT DISCUSSIONS

According to Plaintiff: Not reported.

COMMENTS

According to Plaintiff: Defendant's motion for JNOV was denied. Defendant's motion for new trial was conditionally denied subject to plaintiff accepting remittitur of punitive damages to \$785,000 as excessive. The information for this report was provided by Kenneth J. Rose.

Trials Digest, A Thomson Reuters/West business
San Diego County Superior Court/Chula Vista

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.